

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL A. LUNA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:18-cv-139-SPB-RAL
)	
PTML. ALLISON #442, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This prisoner civil rights action was received by the Clerk of Court on May 16, 2018 and referred to the undersigned, then a United States Magistrate Judge, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges. On the same date that Plaintiff lodged his complaint, the Court determined that it did not contain sufficient facts regarding the actions of each Defendant and ordered him to file an amended pleading. ECF No. 3.

Plaintiff then filed an amended complaint on May 24, 2018. ECF No. 7. On June 14, 2018, the Court granted Plaintiff leave to proceed *in forma pauperis*. ECF No. 11. That same day, the Clerk of Court combined both Plaintiff's original and amended complaints, ECF No. 1-1 and ECF No. 7, and docketed them as a single pleading with one attachment. ECF No. 12. The filing at Document Number 12 thus constitutes the operative pleading in this case. The named Defendants are "Ptln. Allison #442," "Ptln. Edmonds #431," "Ptln. Fatica #461," and "Ptln. Eicher #414."

On September 14, 2018, the undersigned was sworn in as a United States District Judge. Four days later, this action was transferred to the undersigned as presiding judge. ECF No. 17.

On September 27, 2018, the case was referred to United States Magistrate Judge Richard A. Lanzillo for all pretrial proceedings. ECF No. 18.

On January 7, 2019, Defendants filed a motion to dismiss Plaintiff's operative pleading. *See* ECF No. 27. Plaintiff's response to the Defendants' motion was initially due on or before March 4, 2019. ECF No. 29. After Plaintiff failed to respond, Magistrate Judge Lanzillo issued an order directing Plaintiff to show cause, on or before April 9, 2019, for his failure to file a response. ECF No. 31. Plaintiff was expressly advised that his failure to show good cause for his noncompliance could result in the Court ruling on the Defendants' motion without the benefit of his response and/or dismissing the matter for a failure to prosecute. *Id.* Plaintiff was further instructed that, in lieu of showing cause, he could file his response to the Defendants' motion. *Id.*

Plaintiff never attempted to make any showing of good cause, nor did he file a response to the Defendants' motion. Accordingly, on July 26, 2019, Magistrate Judge Lanzillo issued a report and recommendation, opining that Defendants' motion to dismiss should be granted. ECF No. 32. Objections to the report and recommendation were due on or before August 12, 2019. To date, no objections have been received.

After *de novo* review of the operative complaint and documents in the case, together with the Magistrate Judge's report and recommendation, the following order is entered:

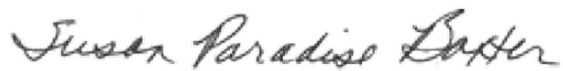
AND NOW, this 23rd day of August, 2019;

IT IS ORDERED that the Defendants' motion to dismiss Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), ECF No. [27], shall be, and hereby is, GRANTED as follows:

1. Plaintiff's Fourth Amendment claim predicated on illegal arrest is DISMISSED with prejudice, inasmuch as the defects in that claim are incapable of being cured through further amendment;
2. Plaintiff's Fourth Amendment claim of illegal strip search is DISMISSED without prejudice to Plaintiff's right to re-plead this claim in an Amended Complaint;
3. Plaintiff's excessive force claim is DISMISSED without prejudice to Plaintiff's right to re-plead this claim in an Amended Complaint;
4. Plaintiff's due process claims relating to the deprivation of his property (money) are DISMISSED without prejudice to Plaintiff's right to re-plead this claim in an Amended Complaint; and
5. All remaining claims set forth in the Plaintiff's pleading shall be, and hereby are DISMISSED with prejudice.

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on July 26, 2019, ECF No. 32, is adopted as the opinion of this Court.

To the extent that Plaintiff wishes to pursue his §1983 claims based on an allegedly illegal strip search, the alleged use of excessive force, and/or the alleged taking of his property without due process of law, IT IS ORDERED that Plaintiff shall file an amended pleading **on or before September 6, 2019**. In the event Plaintiff fails to file an amended pleading within this time frame, the dismissal of the aforementioned claims shall be converted into dismissals *with prejudice*, without further notice, and the case will be closed.



SUSAN PARADISE BAXTER
United States District Judge